



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0392]

RIN 1625-AA00

Fixed and Moving Safety Zone; Around the USACE Bank Grading Units and

USACE Mat Sinking Unit

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 300 yards of the U.S. Army Corps of Engineers (USACE) Bank Grading Units and USACE Mat Sinking Unit while operating on the Lower Mississippi River between MM332 through MM862. The safety zone is needed to protect persons, property, infrastructure, and the marine environment from the potential safety hazards associated with the bank grading and mat sinking operations performed by the USACE. During the effective period, USACE operations may require at times one way traffic, or complete closures during daylight hours when no traffic will be allowed to transit within 300 yards of the operation. Broadcast Notice to Mariners will be used to inform marine traffic of these times based on notice provided by the USACE. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port, Lower Mississippi River, or a designated representative.

DATES: This rule is effective from July 15, 2021 until December 31, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0392 in the “SEARCH” box

and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901-521-4813, e-mail Lindsey.M.Swindle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Lower Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking,
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the USACE is taking necessary and immediate action to protect persons, property, infrastructure, and the marine environment.. Completing the full NPRM process is impracticable because the USCG must establish this safety zone as soon as possible to protect persons, property, infrastructure, and the marine environment from the potential safety hazards associated with the time critical USACE operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be contrary to the public interest because we must respond

to the potential safety hazards associated with the bank grading and mat sinking operations in the LMR by July 15, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP, LMR has determined that potential hazards associated with the bank grading and mat sinking operations will be a safety concern for anyone within a 300 yard radius of USACE equipment. This rule is needed to protect persons, property, infrastructure, and the marine environment within the safety zone while USACE operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from July 15, 2021, through December 31, 2021. The safety zone will cover all navigable waters of the LMR from Mile Marker (MM) 332 through MM 862 extending the entire width of the river. The safety zone will only be activated when USACE operations preclude safe navigation of the established channel. The duration of the zone is intended to protect persons, property, infrastructure, and the marine environment in these navigable waters while operations are being conducted. Broadcast Notice to Mariners will be used to inform marine traffic of these times based on notice provided by the USACE.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 314-269-2332. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the

enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone will temporarily restrict navigation on the LMR from MM 332 through MM 863, from July 15, 2021 through December 31, 2021. Moreover, The Coast Guard will issue BNMs, LNMs, and/or Marine Safety Information Bulletins as appropriate. The rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the LMR from MM 332 through MM 863, that will prohibit entry into this temporary zone. The safety zone will only be enforced while operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0392 to read as follows:

§ 165.T08-0392 Fixed and Moving Safety Zone; around USACE Bank Grading Unit and USACE Mat Sinking Unit.

(a) Location. The following area is a safety zone: All waters of the Lower Mississippi River from MM 332 through MM 863.

(b) Regulations. (1) The safety zone described in paragraph (a) of this section will be activated when USACE operations preclude safe navigation of the established channel. The Coast Guard will inform marine traffic of the of the times the safety zone is activated using Broadcast Notice to Mariners.

(2) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section when the safety zone is activated unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a

commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(3) To seek permission to enter, contact the COTP or the COTP's representative via VHF-FM channel 16 or by telephone at 314-269-2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) Enforcement period. This section will be enforced periodically, as announced on Broadcast Notice to Mariners, from July 15, 2021 until December 31, 2021.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: July 12, 2021.

R. S. Rhodes

Captain, U. S. Coast Guard,

Captain of the Port Sector Lower Mississippi River